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HEARING ON MOTION TO DISMISS  
BEFORE THE HONORABLE LYNN N. HUGHES

Court Reporter: Bruce Slavin, RPR, CMR

17-20131.405

1 THE COURT: Good morning.

2 MS. ANSARI: Good morning.

3 THE COURT: Does the government have a response to  
4 the motion to dismiss?

11:11 5 MS. ANSARI: Yes, Your Honor. In regards to the  
6 exculpatory statements --

7 THE COURT: Use the microphone, please.

8 MS. ANSARI: Yes, Your Honor. In regards to the  
9 main substance of the Defendant's argument about exculpatory  
11:11 10 statements from the Defendant --

11 THE COURT: Well, I don't know about their  
12 arguments. I know that there was a report which has  
13 defensive uses that was not produced.

14 MS. ANSARI: Yes, Your Honor. I became aware of  
11:11 15 the Montgomery police report on Friday.

16 THE COURT: Well, how did you becomes aware of it  
17 on -- Pull that microphone down. Not the top of it. Ma'am,  
18 you have got to get the base down the slope. Now lift it  
19 up.

11:11 20 MS. ANSARI: Yes, Your Honor.

21 THE COURT: There you go. Just like Taylor Swift.

22 MS. ANSARI: Yes, Your Honor.

23 THE COURT: How is it that a police report from  
24 Metropolitan Houston about the Defendant was not part of the  
11:12 25 government's investigation?

1 MS. ANSARI: It was, Your Honor. Ms. Brooks had it  
2 in her possession. When I spoke to her about it on Friday  
3 after I got them and after I spoke to the Defendant, she  
4 said she had e-mailed it to me like two or three years ago.  
11:12 5 I'm sure she did. It is my mistake, Your Honor. I don't  
6 ever remember opening the e-mail or downloading the  
7 documents. I never had them in my file. The first time I  
8 personally saw them --

9 THE COURT: You did have it in your file. Once it  
11:12 10 comes under your control it's --

11 MS. ANSARI: Yes, Your Honor. Again, it is my  
12 mistake. I am at fault for not knowing they existed even  
13 though they were in my e-mail.

14 I forwarded them to them -- to Ms. Herring.

11:12 15 Now, in those statements are complaints by  
16 family members that gave statements similar to Ms. Brooks,  
17 which I gave the statements. They're repetitious. And it  
18 did have a written statement by the Defendant about being  
19 scammed by a birth mother that has nothing to do with what  
11:13 20 she's charged with in that Tammy Parker indictment. So, her  
21 being scammed has nothing to do with what is alleged in the  
22 indictment as far as why she's guilty of fraud.

23 THE COURT: That's not what Ms. Herring says.

24 MS. ANSARI: Right. And that is exactly the point  
11:13 25 I am here today, is it is not exculpatory. Just because you

1 rob a bank and then get robbed after you rob the bank  
2 doesn't make you not guilty of robbing the bank, Your Honor.

3 THE COURT: That's not the argument.

4 MS. ANSARI: Well, that's an analogy to the point.

11:13 5 THE COURT: No. If her defensive argument is that  
6 she didn't know what they were doing and the statement that  
7 is before the indictment or anything where she tells law  
8 enforcement officers that this woman was misleading  
9 everybody --

11:14 10 MS. ANSARI: Your Honor, the Defendant is charged  
11 with sending e-mails and getting money for --

12 THE COURT: I know what she's charged with. You  
13 don't get to decide whether it's exculpatory.

14 MS. ANSARI: Yes, Your Honor.

11:14 15 THE COURT: I get to decide whether it's admissible  
16 as potentially exculpatory.

17 MS. ANSARI: Yes, Your Honor.

18 THE COURT: Defendants get to testify if they want  
19 to, but they don't get to be believed. That's a different  
11:14 20 question entirely.

21 MS. ANSARI: Yes, Your Honor.

22 And another thing I'd like to point out is  
23 that I have had numerous discussions with defense counsel  
24 about Tammy Parker being a scammer from Day 1 when I  
11:14 25 explained the indictment. This is not a surprise. The fact

1 that Tammy Parker is a scammer has been known by everyone  
2 involved in this case.

3 THE COURT: It's a contemporaneous statement by the  
4 party to the case whom you have chosen to indict and not  
11:15 5 produce the stuff.

6 (Counsel confer)

7 Ms. Ansari --

8 MS. ANSARI: Yes, Your Honor.

9 THE COURT: -- if you continue to look away and  
11:15 10 tend to other things while I am speaking to you, you will  
11 get to go outside and rest.

12 MS. ANSARI: I apologize, Your Honor.

13 THE COURT: Well, I'd think that was more sincere  
14 if this weren't the third time I've told you that. Not this  
11:15 15 morning.

16 So, does somebody have a copy of this police  
17 report? It's in here?

18 Who are those gentlemen?

19 MS. ANSARI: Those are agents with the FBI, Your  
11:16 20 Honor.

21 THE COURT: And you're welcome if you're just  
22 goofing off. I just saw it said "agents" and figured I  
23 might figure out who signed out.

24 There is another defensive use of this that  
11:17 25 I'm not going to suggest in case nobody else thought of it.

1 "The couple states they are not stable."

2 "Neither parent is working."

3 Is there an independent -- I only see the  
4 officer's summary of the statement.

11:20 5 MS. HERRING: There is a voluntary statement in  
6 handwriting signed by --

7 THE COURT: Have you read this?

8 MS. HERRING: Yes, Your Honor.

9 THE COURT: Do you have anything to add,  
11:21 10 Ms. Herring?

11 MS. HERRING: I'm sorry. What was the question?

12 THE COURT: Do you have anything you would like to  
13 add?

14 MS. HERRING: I mentioned it in the motion, but  
11:21 15 when I learned of the existence of this report and this  
16 statement and I made a specific request for it, it then came  
17 out that the agent had five other police report statements  
18 that were made, two of which are -- were made by witnesses  
19 that the government has on their witness list for this trial  
11:21 20 that I received on Friday.

21 THE COURT: But the government took those  
22 statements.

23 MS. HERRING: It was the same situation. The  
24 Montgomery County detective made reports and then forwarded  
11:22 25 them to the FBI agent back in 2013.

1 I believe there's also a sixth. It was  
2 mentioned in the e-mail, but it was apparently was too large  
3 to produce to me on Friday that was going to be brought to  
4 court today. I'm not clear on what that is or what witness,  
11:22 5 if any, it pertains to.

6 THE COURT: Is there an additional report?

7 MS. HERRING: There is a report of a family member  
8 that is not being used in this trial, but the file was -- I  
9 did not get it to her on Friday.

11:22 10 THE COURT: What about a year ago?

11 MS. ANSARI: Again, Your Honor, I will take blame  
12 for just realizing that I did not know these Montgomery  
13 police reports were in our possession. It is my  
14 understanding --

11:22 15 THE COURT: Wait. If you knew there were  
16 Montgomery police reports you'd go get them, whether you  
17 have them or whether Ms. Brooks sent them to you. Your job  
18 is to make sure you have everything.

19 MS. ANSARI: Yes, Your Honor.

11:23 20 THE COURT: This case is now a year and a half old?

21 MS. HERRING: Since the indictment, yes, Your  
22 Honor. The investigation started at the end of 2013, I  
23 believe.

24 THE COURT: So, three years that the government has  
11:23 25 worked on this.



1 MS. HERRING: Yes, Your Honor.

2 THE COURT: Is that right?

3 MS. ANSARI: That is correct, Your Honor.

4 THE COURT: Do you have anything against Montgomery  
11:23 5 County?

6 MS. ANSARI: No, Your Honor, I don't have anything  
7 against them, and I -- Honestly, if I had knowledge of those  
8 reports -- I have been an open book. I never try to keep  
9 anything back and if it's -- You know, I get evidence as I  
11:24 10 get it and sometimes I don't get everything --

11 THE COURT: No. You're supposed to know what  
12 you're doing. You're supposed to be the one thinking of  
13 stuff and telling Brooks to go get this, go do that, go talk  
14 to somebody else. Now, she has plenty of people telling her  
11:24 15 what to do inside the agency, but your job is to think about  
16 and figure out other sources of information. And in this  
17 case Swenson has been in the area for some time. I check  
18 more than you did on my law clerk applicants. They're an  
19 unreliable bunch.

11:25 20 Do you have one of the other reports, please,  
21 ma'am?

22 It was lot simpler when you guys wore dark  
23 suits, white shirts and navy ties.

24 MS. BROOKS: I apologize.

11:25 25 THE COURT: No, not you. I'm talking about them.

1 We didn't let girls do it in the old days.

2 MS. HERRING: Your Honor, may I alert you to  
3 something while you look at those reports?

4 THE COURT: Yes, ma'am.

11:26 5 MS. HERRING: So, those are two that pertain to  
6 government's witnesses that will be called and they attach  
7 statements to the police reports. After reviewing the  
8 contents of those statement offered by those witnesses, it  
9 clear to me, without going into detail, that they say things  
11:27 10 different from what was said in the 302s and I believe it  
11 constitutes *Giglio* material that I would also -- Again, I  
12 didn't know of the existence of these until Friday, but  
13 they're -- I believe we were entitled to them as well.

14 THE COURT: That's pretty clear. Whether they're  
11:27 15 exculpatory or not, a witness statement, absolutely.

16 MS. ANSARI: Yes, Your Honor.

17 THE COURT: And who is the person with the very  
18 large file?

19 MS. BROOKS: It was too -- a large number of  
11:28 20 e-mails. It was too large to be e-mailed. But it is a  
21 person by the name of Ann O'Connell, who was also a client  
22 of Sans Pareil. She is not one of the recently listed in  
23 this indictment, but she is somebody who has had several  
24 adoptions with the agency.

11:28 25 THE COURT: But other clients who were

1 contemporaneous might have useful information.

2 Have you gone through -- Ms. O'Connell was it?

3 MS. BROOKS: Yes, sir. She was interviewed by the  
4 FBI also and that 302 was included in the discovery which  
11:28 5 was made available to --

6 THE COURT: Did you read the 302?

7 MS. ANSARI: Yes, Your Honor.

8 THE COURT: Did you even rummage around in this  
9 too-large-to-e-mail file to see what might be in there?

11:29 10 MS. ANSARI: Well, not the police report file, Your  
11 Honor, because, again, I was not aware of it, but it did my  
12 own investigation and created my own theory of the case.

13 THE COURT: And what did O'Connell tell you?

14 MS. ANSARI: Well, I didn't deal with Ann  
11:29 15 O'Connell, Your Honor. I did not speak to her.

16 THE COURT: Which is sort of my point.

17 MS. ANSARI: Well, I did not speak to all the  
18 witnesses in our investigation. I just spoke to the ones  
19 involving the indictment, Your Honor.

11:29 20 THE COURT: Well, because you chose who to  
21 indictment and who to name in the indictment. That's a  
22 circular way of going about this.

23 MS. ANSARI: Right.

24 THE COURT: 'Let's pick these and only look at what  
11:29 25 these claim their experience is.'

1                   What else is out there that you misplaced or  
2 didn't think was relevant so you didn't check it at all?

3                   MS. ANSARI: Nothing at this point, Your Honor.

4                   THE COURT: That's what you told me twice before.

11:30 5                   It turned out within days not to be true.

6                   MS. ANSARI: Yes, Your Honor.

7                   THE COURT: It's like your bank robber telling me  
8 at his third sentencing that he's really sorry and now he  
9 understands it was wrong.

11:31 10                   Let's take a 15-minute recess.

11   (Brief recess)

12                   THE COURT: Thank you. Please be seated.

13                   The law in this court is rather insistent on  
14 what might be called "full disclosure". The cases over the  
12:04 15 last 60 years or so have addressed the inventiveness of the  
16 government in not doing what it's supposed to do. They give  
17 officers' reports but not witness statements, and then they  
18 give witness statements but not other things.

19                   It's fairly straightforward. If the  
12:05 20 government is going to prosecute somebody they have to tell  
21 them what the case is against them in detail.

22                   Many of the old rules were done in an era  
23 where only tax evasion cases were complicated. Most of them  
24 involved crimes that involved something physical - bank  
12:05 25 robbery and smuggling. Now the proliferation of what is

1 sometimes euphemistically called the "information economy"  
2 has proliferated documents beyond the authors of the rules  
3 in 1939 conception.

4 "Exculpatory" includes impeachment evidence.

12:06 5 Most classes of exculpatory evidence do not allow interested  
6 parties, like the government, to decide it's not  
7 exculpatory. Frequently I am surprised by what parties in  
8 criminal and civil cases on both sides think is useful or  
9 impeachment, but that is for a factual evaluation of how  
12:06 10 good the evidence is, how effective, once you pass a legal  
11 threshold of reliability and cogency.

12 The government has had this case for three  
13 years. That should be more than enough. I didn't go back  
14 and count how many get-togethers we have had or -- but I can  
12:07 15 just note that there are 79 docket entries.

16 So, I could continue the case for the purpose  
17 of allowing the government to prepare its case and to share  
18 the information it has. It doesn't have to share  
19 everything, but it should at least describe what it knows  
12:08 20 that it does not share.

21 There have been, I believe, five continuances  
22 by the Defendant, but they were all directly related to  
23 preparation, trying to get supplemental records once they  
24 found out what the government had. A continuance, however,  
12:08 25 would be too much delay. This is not a particularly

1 complicated case, and there is no reason to extend it  
2 farther.

3 The case will be dismissed.

4 Ms. Herring, anything else this morning?

12:09 5 Oh. Let me hasten. None of this is a  
6 reflection on the Federal Bureau of Investigation or the  
7 Montgomery County Sheriff's Department. The Bureau responds  
8 wonderfully with guidance from counsel. There is a reason  
9 we don't let FBI agents try cases. I know a lot of you are  
12:10 10 lawyers, but you need a trial lawyer for that sort of thing.  
11 It is simply a glitch in the Department of Justice.

12 Now, Ms. Herring.

13 MS. HERRING: Yes, Your Honor. Is the dismissal --  
14 We'd request a dismissal with prejudice.

12:10 15 THE COURT: Yes, ma'am. It's sort of an empty  
16 gesture, isn't it?

17 MS. HERRING: Yes, Your Honor.

18 THE COURT: Has limitations run on anything?

19 MS. HERRING: Your Honor, I believe it would be an  
12:10 20 empty gesture. It's circular.

21 THE COURT: Has limitations run?

22 MS. HERRING: I'm not sure, Your Honor.

23 THE COURT: Well, still, to crank it up and take  
24 another three years is unacceptable. The answer to your  
12:11 25 question is "Yes, ma'am."

1 MS. HERRING: Thank you, Your Honor.

2 THE COURT: Ms. Ansari, anything further?

3 MS. ANSARI: No.

4 THE COURT: Thank you.

12:11 5 Thank you, officers.

6

7 COURT REPORTER'S CERTIFICATE

8 I, BRUCE SLAVIN, certify that the foregoing is a

9 correct transcript from the record of proceedings in the

10 above entitled matter, to the best of my ability.

11

12 s/Bruce Slavin  
13 BRUCE SLAVIN, RPR, CMR

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